Supreme Court, U.S.
FILED
JUN 9 . 2003
OFFICE OF THE CLERK

No. 02-1265

IN THE
Supreme Court of the United States

EXXONMOBIL GAS MARKETING COMPANY, A DIVISION OF EXXON MOBIL CORPORATION, *et al.*,
Petitioners,

v.

FEDERAL ENERGY REGULATORY COMMISSION, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

REPLY BRIEF

STEPHEN L. TEICHLER
DUANE MORRIS LLP
1667 K Street, N.W., Suite 700
Washington, D.C. 20006
(202) 776-7830
Counsel for ExxonMobil Gas Marketing Company

JON L. BRUNENKANT
BRUNENKANT & HASKELL, LLP
805 15th Street, N.W.
Suite 1101
Washington, D.C. 20005
(202) 408-0700
Counsel for BP America Production Company, BP Energy Company, and Texaco Natural Gas Inc.

CARTER G. PHILLIPS*
EUGENE R. ELROD
STEPHEN B. KINNAIRD
LESLIE A. SHUBERT
SIDLEY AUSTIN BROWN & WOOD LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000
Counsel for Petitioners

* Counsel of Record

June 9, 2003

[Additional Counsel Listed on Inside Cover]

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

DOUGLAS W. RASCH
EXXON MOBIL CORPORATION
800 Bell Street
Houston, TX 77002
(713) 656-4418
Counsel for ExxonMobil Gas Marketing Company

J. JEANNIE MYERS
TEXACO NATURAL GAS INC.
1111 Bagby Street
Houston, TX 77002
(713) 752-3190
Counsel for Texaco Natural Gas Inc.

FREDERICK T. KOLB
BP AMERICA INC.
501 WestLake Park Blvd.
Room 16.150
Houston, TX 77079
(281) 366-5009
Counsel for BP America Production Company and BP Energy Company

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
REPLY BRIEF	1
CONCLUSION	10

TABLE OF AUTHORITIES

CASES — Page

California v. *Southland Royalty Co.*, 436 U.S. 519 (1978) 6
Carson Petroleum Co. v. *Vial*, 279 U.S. 95 (1929) 2
Chevron U.S.A., Inc. v. *FERC*, 193 F. Supp. 2d 54 (D.D.C. 2002), *appeal pending sub. nom. Williams Cos.* v. *FERC*, Nos. 02-5056 et al. (D.C. Cir. docketed Feb. 20, 2002) 10
Continental Oil Co. v. *FPC*, 370 F.2d 57 (5th Cir. 1966) 10
FPC v. *East Ohio Gas Co.*, 338 U.S. 464 (1950) 3
FPC v. *Panhandle E. Pipe Line Co.*, 337 U.S. 498 (1949) 2, 3, 7
Hughes Bros. Timber Co. v. *Minnesota*, 272 U.S. 469 (1926) 4
Interstate Natural Gas Co. v. *FPC*, 331 U.S. 682 (1947) 3
Kosydar v. *National Cash Register Co.*, 417 U.S. 62 (1974) 2
Lechmere, Inc. v. *NLRB*, 502 U.S. 527 (1992) 4
Michigan-Wis. Pipe Line Co. v. *Calvert*, 347 U.S. 157 (1954) 2, 3
Northern Natural Gas Co. v. *State Corp. Comm'n*, 372 U.S. 84 (1963) 3, 4
Panhandle E. Pipe Line Co. v. *Public Serv. Comm'n*, 332 U.S. 507 (1947) 3
Phillips Petroleum Co. v. *FPC*, 556 F.2d 466 (10th Cir. 1977) 7

STATUTES

15 U.S.C. § 717(b) 1
§ 717a(6) 8
§ 717c 8
§ 717f(b) 6

TABLE OF AUTHORITIES – continued

Page

43 U.S.C. § 1334(f) 10

LEGISLATIVE HISTORY

124 Cong. Rec. H417-18 (daily ed. Jan. 31, 1978) 10

ADMINISTRATIVE DECISIONS

Alternative Methods for Regulating Natural Gas Pipeline Facilities & Servs. on the Outer Continental Shelf, 4 FERC Statutes & Regs. ¶ 35,532 (1998) 10

Jupiter Energy Corp., 103 FERC ¶ 61,184 (2003), *available at* 2003 WL 21130622 8

Sea Robin Pipeline Co., 98 FERC ¶ 63,023 (2002) 8

Shell Gas Pipeline Co., 74 FERC ¶ 61,277 (1996) 5

Shell Offshore, Inc. v. *Transcontinental Gas Pipe Line Corp.*, 100 FERC ¶ 61,254 (2002) 8, 9

Transcontinental Gas Pipe Line Corp., 96 FERC ¶ 61,115 (2001) 9

REPLY BRIEF

In this case, a divided court of appeals interpreted the Natural Gas Act (NGA) in contravention of its plain language and multiple precedents of this Court, and acquiesced in a surrender of jurisdiction by the Federal Energy Regulatory Commission (FERC) that "is unlawful in light of what we have been told by the Supreme Court in *Northern Natural Gas Co.* [v. *State Corp. Commission*, 372 U.S. 84 (1963)]." Pet. App. 35a (Edwards, J., dissenting). The court compounded its error by eviscerating the abandonment provision of section 7(b) of the NGA as applied to jurisdictional transportation service, which frees offshore pipelines like Sea Robin to restructure their operations without any public-interest review by FERC in order to gain unregulated monopoly power over shippers. Respondents protest that the decision below has no effect given the FERC's current exercise of ancillary NGA jurisdiction over Sea Robin's gathering rates, but that is no answer. That rate jurisdiction lasts only as long as Sea Robin abides it. If Sea Robin spins down its freshly christened "gathering" facilities to an affiliate, or spins them off to an unaffiliated company, FERC has stated that it is powerless to stop the transaction or to regulate the rates charged to shippers, unless the transaction is a sham. Accordingly, the issues of NGA jurisdiction presented here will never be reviewed by any court (including this Court). That is why the shipper community is up in arms, and why the pipelines so vigorously defend the decision below despite their disingenuous claims of its irrelevance. The future of NGA regulation on the Outer Continental Shelf (OCS), and the billions of dollars invested in reliance on that regulation, are at stake in this decision. This Court's review is imperative.

1. FERC has NGA jurisdiction if Sea Robin engages in "the transportation of natural gas in interstate commerce" rather than exempt "gathering." 15 U.S.C. § 717(b). It is astonishing that respondents (like the court below) insist that

the basic jurisdictional terms of the NGA are ones of "inherent ambiguity," Pet. App. 18a, and that federal jurisdiction is determined by any line drawn by FERC under an indeterminate multifactor balancing test, if it is not "patently unreasonable." *Id.* at 19a-20a; FERC Opp. 11-12. Nothing could be further from the scheme of the NGA.

The term "transportation of natural gas in interstate commerce" had a plain legal meaning at the time of the NGA's enactment. Natural gas commenced interstate transportation when "the gas *enters the pipeline carrier* and moves on continuously to its outside market" with "'no break, no period of deliberation, but a steady flow ending as contemplated from the beginning beyond the state line.'" *Michigan-Wis. Pipe Line Co.* v. *Calvert*, 347 U.S. 157, 167 (1954) (emphasis added) (quoting *United Fuel Gas Co.* v. *Hallanan*, 257 U.S. 277, 281 (1921)). Indeed, "transportation in interstate commerce," which was immune from direct state regulation under the Commerce Clause, had the same meaning across all commodities: goods were transported in interstate commerce when they "'"actually started in the course of transportation to another State, or were delivered to a carrier for transportation."'" *Carson Petroleum Co.* v. *Vial*, 279 U.S. 95, 107 (1929). Far from being a concept of "inherent ambiguity," Pet. App. 18a, it was "'clearly defined so as to avoid all ambiguity or question.'" *Kosydar* v. *National Cash Register Co.*, 417 U.S. 62, 71 (1974) (quoting *Coe* v. *Errol*, 116 U.S. 517, 526 (1886)).

There can be no debate (because this Court has held) that the NGA incorporates this "clearly defined" meaning of transportation in interstate commerce, for it adopted the mechanical tests of contemporaneous Commerce Clause jurisprudence in defining federal jurisdiction under the NGA. Pet. 11-13.[1] Because "transportation of natural gas in

[1] Williams challenges this analysis, invoking the declaration in *FPC* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498 (1949), that the NGA does not regulate "the entire natural-gas field to the limit of constitutional

interstate commerce" has the plain meaning given by this Court's cases, the statutory term "gathering" likewise has a plain meaning, as this Court ruled in *Northern Natural*: it is "narrowly confined to the physical act[] of ... preparing [gas] for the first stages of distribution." 372 U.S. 84, 90 (1963). Gathering was within state power because it occurred *prior to* interstate transportation: it was a "distinct local activity" that was not part of "a separate movement in commerce." *Michigan-Wis. Pipe Line*, 347 U.S. at 167. Because transportation in interstate commerce has always been broadly construed to ensure effective federal power, Pet. 18-19, this Court has held that the "gathering" and other exceptions to FERC jurisdiction "are to be strictly construed." *Interstate Natural Gas Co.* v. *FPC*, 331 U.S. 682, 690-91 (1947).

The ruling below that "transportation" is determined by any reasonable *ad hoc* FERC assessment of a pipeline's physical characteristics, without any presumption in favor of jurisdiction, flies in the face of a half-century of precedent. Pet. 14-16. FERC cannot distinguish this Court's precedents applying the strict construction rule on the ground that they involved its sales jurisdiction (FERC Opp. 13); the gathering exemption does not "mean one thing for 'transportation' and another where 'sale for resale' is involved." *FPC* v. *East Ohio Gas Co.*, 338 U.S. 464, 473 (1950). The FERC also misrepresents petitioners' position. We propose no "'bright-

---

power," *id.* at 502. Williams Opp. 12. Williams misunderstands both *Panhandle* and Commerce Clause jurisprudence. Under that jurisprudence, states were allowed concurrent regulation of some aspects of interstate commerce "in the absence of congressional prohibition," 337 U.S. at 510 n.15, but were wholly excluded from others. In the NGA, Congress declined to regulate all interstate commerce in natural gas (such as direct interstate sales to consumers). *Panhandle E. Pipe Line Co.* v. *Public Serv. Comm'n*, 332 U.S. 507, 516-17 (1947). Instead, it limited NGA jurisdiction to "that interstate segment which the states were powerless to regulate because of the Commerce Clause" – namely, interstate sales for resale and interstate transportation – and there its purpose was to "occupy this field." *Panhandle*, 337 U.S. at 503, 510 n.15. Thus, the Commerce Clause definition of interstate transportation is the NGA definition.

line test'" that "any movement of gas by a pipeline involves transportation." FERC Opp. 10. For example, the movement of gas prior to delivery to an interstate carrier, or prior to the point where intrastate rather than interstate transportation may occur, may be exempt gathering, depending on application of FERC's primary function test. Nor do we contend that offshore gathering inexorably "ceases at the wellhead or production platform operating offshore," *id*; rather, because the entirety of the Sea Robin system is engaged in transportation, that is the logical dividing line in this case. Pet. App. 36a (Edwards, J., dissenting).

Petitioners instead contend that "transportation in interstate commerce" has its plain meaning, and that in applying the primary function test the gathering exemption must be "narrowly confined to the physical act[] of ... preparing [gas] for the first stages of distribution." *Northern Natural*, 372 U.S. at 90.[2] Here, there can be no question that Sea Robin engages in interstate transportation from the point that it receives gas that it will carry without interruption across the Louisiana state line. *Hughes Bros. Timber Co.* v. *Minnesota*, 272 U.S. 469, 475 (1926) ("Solution is easy when the shipment has been delivered to the carrier for a destination in another State."). Moreover, as Judge Edwards observed, there is no distinct physical act of preparing gas that occurs at the Vermilion fork, and FERC's designation of that point as gathering "is perplexing on its own terms, and it is unlawful in light of what we have been told by the Supreme Court in *Northern Natural Gas Co.*" Pet. App. 35a.[3]

---

[2] There is no question of *Chevron* deference (Williams Opp. 10); the agency is entitled to no deference after this Court has interpreted the statute. *Lechmere, Inc.* v. *NLRB*, 502 U.S. 527, 536-37 (1992).

[3] FERC's position is rife with contradiction. It refuses to acknowledge its rule that a transportation pipeline cannot feed into a gathering pipeline, Pet. 20, contending that it will instead apply its 13-factor test (which does not account for adjoining pipelines) to Garden Banks. FERC Opp. 12-13. That shows the arbitrariness of FERC's approach. There is no question that Garden Banks – a single-trunk, 50-mile long "large diameter, high

FERC makes no pretense of complying with *Northern Natural*; it baldly declares that it need not identify any physical act of preparing gas for distribution so long as it applies its 13 factors. FERC Opp. 12. FERC deems it enough that the D.C. Circuit found *Northern Natural* "'clearly relevant.'" *Id.* at 14 (emphasis omitted) (quoting Pet. App. 21a). But *Northern Natural* is controlling, not just relevant, and the court below deviated from *Northern Natural* by refusing to apply a rule of strict construction (even though Sea Robin's physical characteristics "are entirely compatible with a transportation function," Pet. App. 33a (Edwards, J., dissenting)). Instead, the court declared a contrary presumption in favor of whatever line FERC draws. *Id.* at 19a-20a.

Similarly unavailing is FERC's defense of the D.C. Circuit's holding that it would not apply this Court's "restrictive definition of 'gathering'" with the same stringency to offshore pipelines providing unbundled transportation service, Pet. App. 21a-22a. Many errors pervade the lower court's analysis on this point, Pet. 14-18, but its principal error is failing to recognize that the statutory terms "transportation" and "gathering," and the rule of strict construction of exemptions from NGA jurisdiction, derive from the Commerce Clause distinctions incorporated into the NGA.

---

pressure facility that does not collect gas from any wells downstream of the Enchilada Platform" – is a transportation facility, as FERC has ruled, *Shell Gas Pipeline Co.*, 74 FERC ¶ 61,277, 61,897 (1996). Jurisdiction should not be on-and-off without change in the underlying statute. Regardless, in reconsidering the jurisdictional status of Garden Banks, FERC may either massage the test to find gathering, or reaffirm its prior ruling with the absurd result that gas will be gathered after being transported; either would be arbitrary. Similarly, FERC emphasizes the importance of whether the pipe is upstream of the processing plant, stating that offshore pipelines "*gather*[] the gas so that it may be processed for distribution." FERC Opp. 10. This contradicts both its order below that the behind-the-plant test has limited importance for offshore pipelines, Pet. App. 82a-83a, and its designation of the Vermilion fork (where no processing occurs) as the dividing line on Sea Robin's system between gathering and transportation.

Strict construction is a legal rule that applies to all pipelines, regardless of their location. Moreover, FERC fails to explain how the new "'context'" of deregulated wellhead sales and unbundled pipeline services, FERC Opp. 14, can affect the FERC's transportation jurisdiction. The statutory grants of sales and transportation jurisdiction are independent, and sales deregulation cannot constrict the scope of the FERC's transportation jurisdiction. Pet. 17 (citing cases).[4] The ruling below on the critical question of NGA jurisdiction irreconcilably conflicts with *Northern Natural* and other precedent.

2. After the FERC's order below, Sea Robin discontinued its receipt-to-delivery jurisdictional transportation service, and replaced it with separately tariffed gathering and transportation services over the different segments of its system. Despite this cessation of jurisdictional service, the D.C. Circuit held that there was no "abandonment" subject to section 7(b) of the NGA because Sea Robin continued to provide the same *physical* service over those facilities, and in any event section 7(b) does not apply to nonjurisdictional facilities. Pet. 25a. The petition demonstrates that the ruling below conflicts: (1) with the plain language of section 7(b), which requires public-interest review of abandonment of both jurisdictional service and jurisdictional facilities, 15 U.S.C. § 717f(b); (2) with *California* v. *Southland Royalty Co.*, 436 U.S. 519, 525-31 (1978), which holds that changing a certificated jurisdictional service into a nonjurisdictional service constitutes an abandonment requiring FERC authori-

[4] Deregulation explains only why interstate pipelines, no longer engaging in jurisdictional sales, now seek reclassification: *i.e.*, to escape rate regulation and use market power to charge high rates. The claim that pipelines need to compete with independent gatherers, Williams Opp. 5, is highly disingenuous; there is virtually no competition with OCS pipelines already connected to gas reserves, and certainly no one will build 370 miles of offshore pipeline to duplicate Sea Robin's already-built, largely depreciated "gathering" facilities. FERC's characterization of Sea Robin as "one of numerous competing pipeline systems located on the OCS," FERC Opp. 5, is also misleading. Sea Robin is a monopolist with regard to all the existing producers captive to its system.

zation under section 7(b); (3) with *Phillips Petroleum Co.* v. *FPC*, 556 F.2d 466, 467-69 (10th Cir. 1977), which holds that a change in jurisdictional service requires abandonment authorization even if physical service continues; and (4) with prior FERC orders recognizing that abandonment proceedings must be held if reclassified "gathering" facilities were (as here) formerly used to provide a jurisdictional service. Pet. 22-27.

Respondents have no answer for (and barely confront) these arguments. FERC tries to distinguish *Phillips* as a case in which a different company provided the substitute service, FERC Opp. 15, but that was not the basis of the Tenth Circuit's 7(b) holding. The Tenth Circuit held (in direct conflict with the court below) that abandonment was required when a jurisdictional service was replaced, even though the physical service was still provided. Pet. 25-26. FERC also attempts to distinguish its prior orders as applying to facilities, not services (FERC Opp. 15 n.3), but section 7(b) applies by its plain terms equally to both, and FERC's prior orders cannot be reconciled with the D.C. Circuit's holding that section 7(b) does not apply to facilities that are reclassified as nonjurisdictional, Pet. 25a. Williams cites the *Panhandle* case (Williams Opp. 16-17), but that case is inapposite because it involved a transfer of gas reserves and not facilities that had ever been used to render a jurisdictional service. 337 U.S. 498, 509 (1949). Williams also wrongly states that petitioners seek to apply section 7(b) to an exempt gathering service (Williams Opp. 17 n.12); to the contrary, the abandoned service subject to section 7(b) review is Sea Robin's prior jurisdictional receipt-to-delivery transportation service. In short, respondents cannot defend the indefensible. The court below erroneously held, in conflict with this Court and the Tenth Circuit, that jurisdictional service may be terminated without the public interest findings required by section 7(b).

3. FERC does not deny any of its prior admissions that prove the importance of this Court's immediate review: namely, that (1) billions have been invested in the OCS in

reliance on NGA jurisdiction; (2) regulatory uncertainty impedes OCS investment; (3) if Sea Robin's facilities can be reclassified as nonjurisdictional, almost any OCS pipeline can be; (4) Sea Robin will have market power if it prevails; and (5) OCS pipelines exercising market power in unregulated gathering facilities distort price signals, threaten production and competition, and harm consumers. See Pet. 2, 27-30; NGSA Br. 2-5. Indeed, FERC's Chairman recently questioned whether the *Sea Robin* test provides "sufficient incentives to develop offshore gas supplies needed to meet the country's demand for natural gas." *Jupiter Energy Corp.*, 103 FERC ¶ 61,184 (2003) (Wood, Chmn., concurring). The decision below controls the future of OCS pipelines generally – as is underscored by the participation of Williams, which has no interest in the Sea Robin pipeline, but owns many OCS pipelines that it seeks to free from NGA rate regulation.

Nonetheless, FERC and the other respondents contend that because FERC continues to exercise "in connection with" jurisdiction to require that Sea Robin's gathering rates are "just and reasonable," 15 U.S.C. § 717c(a), the whole of Sea Robin's system is currently subject to NGA rate regulation, and thus there is no "pressing need" for this Court's review.[5] Nothing could be further from the truth.

The critical fact, undisclosed by respondents, is that Sea Robin can terminate the FERC's "in connection with" jurisdiction at will. FERC exercises this rate jurisdiction over Sea Robin's gathering services only because Sea Robin is a "natural-gas company," *id.*, that is, a provider of jurisdictional transportation service, *id.* § 717a(6); *Shell Offshore, Inc.* v. *Transcontinental Gas Pipe Line Corp.*, 100 FERC ¶ 61,254, 61,912 (2002). But FERC has stated that it "has no discretion to withhold [abandonment] authorization" if gathering facilities are spun down to an affiliate who provides no

[5] The settlement regarding Sea Robin's specific gathering rates was expressly without prejudice to the judicial proceedings in review of this decision. *Sea Robin Pipeline Co.*, 98 FERC ¶ 63,023, 65,092 (2002).

jurisdictional service. Thereafter it "has no authority to regulate [the affiliated] gatherer's rates or its terms and conditions of service." *Transcontinental Gas Pipe Line Corp.*, 96 FERC ¶ 61,115, 61,435 (2001). The only exception recognized by FERC is a "sham" transaction where the pipeline and the affiliate "act[] in concert ... in a manner that frustrates the Commission's effective regulation of the interstate pipeline," *Shell Offshore*, 100 FERC at 61,913; FERC Opp. 17. Thus, if Sea Robin "spins down" its "gathering" facilities upstream of the Vermilion fork, under its precedents FERC will have no power to block the transaction or to regulate the affiliate's rates (unless the transaction is a sham): Sea Robin would be abandoning nonjurisdictional facilities over which it currently provides nonjurisdictional service. The same result would obtain if Sea Robin were simply to "spin off" its gathering facilities to an unaffiliated entity that provides no transportation service, commanding a high price that capitalizes the future monopoly rents from facilities that are free of NGA rate regulation.

FERC does not dispute any of the above, but maintains that there is "no evidence that Sea Robin is poised to cease service." FERC Opp. 15. Sea Robin has not spent almost a decade and untold legal fees litigating its jurisdictional status simply to maintain the *status quo ante* of rate regulation. Just as its peers have done, Sea Robin will undoubtedly spin its gathering facilities down or off once appeals are exhausted. At that point, NGA regulation will cease. In any event, a decision vesting a pipeline with the power to escape statutory rate jurisdiction by unilateral action is a significant regulatory change that itself warrants this Court's review.

If this Court denies this petition, Sea Robin and other OCS pipelines will not only escape FERC jurisdiction but also permanently avoid this Court's review. This Court will have no opportunity to decide these questions after Sea Robin spins its "gathering" facilities down or off; there will be no legal basis to challenge the transactions, and the jurisdictional

decision will be a final judgment that cannot be collaterally attacked. Every OCS pipeline will follow the same roadmap to avoid review: win reclassification of a part of its system as "gathering"; continue physical service but as combined jurisdictional transportation and nonjurisdictional gathering services (thus evading abandonment review); tolerate "in connection with" rate regulation until appeals are exhausted; then spin the gathering facilities down or off and escape both FERC's NGA regulation and judicial review. The effect on shippers and consumers will be to subject them to monopoly power, which is contrary to the very purpose of the NGA. If this Court agrees that the questions presented are important, it must decide these issues in this case.[6]

CONCLUSION

For the foregoing reasons, and those stated in the petition, the petition should be granted.

---

[6] Respondents' invocation of the Outer Continental Shelf Lands Act ("OCSLA") is a red herring. OCSLA governs mineral leasing on the OCS, and a single subsection requires oil and gas pipelines to provide nondiscriminatory access to shippers. 43 U.S.C. § 1334(f). There is universal consensus that OCSLA is additive to FERC's NGA authority. *Id.* § 1334(f)(4); *Continental Oil Co.* v. *FPC*, 370 F.2d 57, 67 (5th Cir. 1966) ("The plain meaning and legislative history of the statutes show, at least in this case, that the OCSLA and the Gas Act must be applied reciprocally in furtherance of their individual regulatory purposes."); 124 Cong. Rec. H417-18 (daily ed. Jan. 31, 1978) (statement of Rep. Seiberling); *Alternative Methods for Regulating Natural Gas Pipeline Facilities & Servs. on the Outer Continental Shelf*, 4 FERC Statutes & Regs. ¶ 35,532, 35,730 (1998). OCSLA contains no specific ratemaking authority kindred to the NGA; the FERC has never asserted any such OCSLA power; and even FERC's OCSLA regulations requiring reports from pipelines have been enjoined as lacking statutory authority. *Chevron U.S.A., Inc.* v. *FERC*, 193 F. Supp. 2d 54, 68-75 (D.D.C. 2002), *appeal pending sub. nom. Williams Cos.* v. *FERC*, Nos. 02-5056, et al. (D.C. Cir. docketed Feb. 20, 2002). OCSLA thus has no bearing on the transportation/gathering distinction under the NGA as applied to offshore pipelines, and cannot diminish the impact on OCS production if pipelines are allowed to escape NGA rate regulation.

Respectfully submitted,

STEPHEN L. TEICHLER
DUANE MORRIS LLP
1667 K Street, N.W., Suite 700
Washington, D.C. 20006
(202) 776-7830
Counsel for ExxonMobil Gas Marketing Company

JON L. BRUNENKANT
BRUNENKANT & HASKELL, LLP
805 15th Street
N.W., Suite 1101
Washington, D.C. 20005
(202) 408-0700
Counsel for BP America Production Company, BP Energy Company, and Texaco Natural Gas Inc.

DOUGLAS W. RASCH
EXXON MOBIL CORPORATION
800 Bell Street
Houston, TX 77002
(713) 656-4418
Counsel for ExxonMobil Gas Marketing Company

CARTER G. PHILLIPS*
EUGENE R. ELROD
STEPHEN B. KINNAIRD
LESLIE A. SHUBERT
SIDLEY AUSTIN BROWN & WOOD LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000
Counsel for Petitioners

FREDERICK T. KOLB
BP AMERICA INC.
501 WestLake Park Blvd.
Room 16.150
Houston, TX 77079
(281) 366-5009
Counsel for BP America Production Company and BP Energy Company

J. JEANNIE MYERS
TEXACO NATURAL GAS INC.
1111 Bagby Street
Houston, TX 77002
(713) 752-3190
Counsel for Texaco Natural Gas Inc.

June 9, 2003

* Counsel of Record